IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/03/2006

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.24857 of 2001 and W.P.No. 25609 of 2001

I) W.P.No.24857/2001
M/s.National Stock Exchange of India Ltd.
Rep. by its Authorised Signatory
A.Sabastian
having its Main Office at Exchange Plaza
Bandra Kurla Complex
Bandra (E)
Mumbai-400 051
.. Petitioner
-Vs-

1.The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Regional Office
No.20, Royapettah High Road
Chennai.14

2.The Managing Director
Premier Securities Ltd.
Having its regd. Office at
"Karumuthu Centre", V Floor
498, Anna Salai, Nandanam
Chennai-35 .. Respondents

II) W.P.No.25609/2001
1.S.Gangadhara Rao
2.P.Bhaskara Raju .. Petitioners

vs.

1.Employees' Provident Organisation
rep. by Asst.PF Commissioner
20, Royapettah High Road
Chennai.14

2.National Stock Exchange of India Ltd.
Rep. by its Director

No.9 Bazullah Road
T.Nagar, Chennai 17

3.Premier Securities Ltd.
Rep. by its Managing Director
'Vairams' 4th Floor
112, Thyagaraya Road
T.Nagar, Chennai.17
.. Respondents

W.P.No.24857/2001 filed under Article 226 of the Constitution of India seeking to issue a writ of certiorarified mandamus as stated therein.

W.P.No.25609/2001 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, as stated therein.

!Mr.T.R.Rajagopalan, : For petitioner in
Senior Counsel, for W.P.No.24857/01 &

^Mr.S.Thiruvenkatasamy for 2nd respondent in
W.P.25609/2001

Mr.G.R.Swaminathan : For petitioners in
W.P.No.25609/01

Mr.Titus Jesudoss : For 1st respondent in
W.P.No.25609/01.

Mr.P.B.Benjamin George : For 1st respondent
in W.P.No.24857/01.

:COMMON ORDER

I) Writ Petition No.24857/2001 has been filed for issue of a writ of certiorarified mandamus to call for the records of the 1st respondent dated 28.8.2001 made in E2/TN/39526/E.0/Circle I/2001 along with order bearing proceedings No.E1/TN/36764/ENF/Regl/2001, dated 5.1.200 1 issued under Sec.8F of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') and forbear the 1st respondent and their agents, servants or other persons in any manner dealing with the Security Deposit lying with the petitioner given at the instance of the 2nd respondent, as its trading member according to bye-laws, rules and regulations of the Stock Exchange.

2. The petitioner is a recognised stock exchange in India having his own rules, bye-laws and regulations. The second respondent became a trading member in the petitioner stock exchange and as per the requirements of the bye-laws and rules, the 2nd respondent deposited a sum of Rs.56 lakhs for their admission to membership of capital market segment. Out of this amount of Rs.56 lakhs, Rs.45 lakhs was received by the petitioner-stock exchange as security deposit against clearing and settlement of dues that may be accrued

at the instance of the 2 nd respondent trading member. Rs.5 lakhs was received against equipment given to the 2nd respondent and the balance of Rs.1 lakh was received for supply of U.P.S. by the petitioner stock exchange. Out of Rs.45 lakhs received as security deposit, Rs.9 lakhs had already been given to National Securities Clearing Corporation for the purpose of appropriation of member dues and the balance of deposit of Rs.36 lakhs is with the petitioner.

3. As per the bye-laws, rules and regulations, the petitioner has a first charge and lien on the deposit given by the 2nd respondent. The 2nd respondent violated the terms and conditions of the rules, byelaws and regulations and the petitioner withdrew the trading facilities with effect from 21.7.1999. Subsequently, the 2nd respondent has also been expelled from the membership of the petitioner from 1.3.200 1 . As per the bye-laws upon expulsion from the membership, assets of the 2nd respondent shall vest with the defaulter's committee. As per clause 23 of the bye-laws the assets shall be obtained in satisfying the claims in order of priority as provided thereunder and only if any surplus is available, the same is liable to be returned to the defaulting trading member. So far 11 arbitration awards have been passed against the 2nd respondent in the arbitral proceedings and the total amount of the award passed against the 2nd respondent comes to Rs.2 5,15,552.33 and since the 2nd respondent has now become a defaulter, the defaulting committee of the petitioner is liable to fulfil the liability of the 2nd respondent from the security deposit available with the petitioner.

4. While so the 1st respondent communicated an order dated 5.1.2001 issued under Sec.8(F) of the Act attaching the security deposit of the 2nd respondent to the tune of Rs.30 lakhs lying with the petitioner. The order was passed by the 1st respondent on the basis that the 2nd respondent committed default in remitting a sum of Rs.2,44,547/- being the Provident Fund contribution in respect of the employees and also a sum of Rs.17,97,510/towards the arrears of P.F. dues of the group company of the 2nd respondent called, M/s.Premier Housing and Industrial Enterprises Ltd. After receipt of the said order dated 5 .1.2001, the petitioner sent a letter giving all the facts and figures and also indicating the right of the petitioner over the security deposit. The 1st respondent rejected the right of the petitioner over the security deposit of the 2nd respondent by letter dated 28.8.2001 . Challenging the letter dated 28.8.2001 along with the order dated 5.1.2001, the Writ Petition No.24857/2001 has been filed for the aforesaid relief.

5. On 19.12.2001 this court while admitting the writ petition granted stay of the impugned order subject to the condition that the petitioner shall keep the amount of Rs.30 lakhs lying with the petitioner intact without any transactions for a period of eight weeks. By order dated 6.3.2002, this court continued the interim stay subject to the petitioner keeping Rs.27,89,611.89 intact without any transaction, as it was represented by the learned counsel for the petitioner that the amount lying with the petitioner was only Rs.27,89,611.89.

6. The 1st respondent filed counter affidavit. According to the 1 st respondent, M/s.Premier Housing and Industrial Enterprises Ltd. is an

establishment covered under the Act bearing P.F.Code No.TN-39526. The said establishment failed to pay the statutory Provident Fund dues for the period from April 1998 to March 2000. As such an enquiry under Sec.7A of the Act was initiated on 14.6.2000 and the dues were assessed to the extent of Rs.17,97,510/- and necessary proceedings were issued to the establishment directing them to pay the P.F. dues and action under Sec.8F of the Act was invoked for attachment of Rs.2 0,42,057/- which includes dues of Rs.17,97,510 by M/s.Premier Housing and Industrial Enterprises Ltd. and a sum of Rs.2,44,547/- by its group of companies, namely, M/s.Premier Securities Ltd., the 2nd respondent herein.

7. According to the 1st respondent department, as per Sec.11 of the Act, the amount due from an employer shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the e being in force, be paid in priority on all other debts. The petitioner establishment was also explained in detail that the statement furnished by them is not reliable in view of the fact that the statement was totally contrary to the provisions of Sec.8F(3)(i)(ii) of the Act. Therefore, they have prayed for dismissal of the writ petition.

8. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel for the 1st respondent. I have also perused the records filed in support of their contentions.

9. The learned Senior Counsel appearing for the petitioner relied on the following judgments and submitted that the impugned proceedings are liable to be quashed:-
(1) AIR 1966 S.C. 1370 (Kesoram Industries v. The Commissioner of Wealth Tax, (Central); (2) AIR 1981 S.C. 1585; (Beharilal Ramcharan v. The I.T. Officer, Kanpur); (3) (2001)3 SCC 559 (Stock Exchange, Ahmedabad v. Asst. Commissioner of Income Tax, Ahmedabad); (4) (2004)1 SCC 160 (Bombay Stock Exchange v. Jaya I.Shah); (5) (2000)5 SCC 694 (Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.); (6) (2001) 3 SCC 482 (B.S.E.Brokers' Fourm, Bombay v. Securities and Exchange Board of India); (7) 2003-II-LLJ 657 (Keystone India (P) Ltd., Guduvancheri v. R.P. F. Commissioner, Chennai; (8) (1993)3 SCC 217 (Srikanta Datta Narasimharaja Wodiyar v. Enforcement Officer, Mosore; (9) AIR 1999 S.C. 2517(Vinay Bubna v. Stock Exchange, Mumbai) and (10) 2003-IIILLJ 419 (Manager, Vijaya Bank v. R.P.F. Commissioner, Mangalore & others).

10. Learned counsel for the 1st respondent relied on the decision in 2002-I- LLJ 986 (F.C.Construction(I) Pvt. Ltd. v. R.P.F.Commr., Indore).

11. The impugned order dated 5.1.2001 in this W.P.No.24857/2001 was issued under Sec.8F of the Act, attaching the deposit money of Rs.30 lakhs lying at the credit of M/s.Premier Securities Ltd., the 2nd respondent towards the outstanding arrears payable by these two companies, namely, M/s.Integrated Finance Co. Ltd., and M/s.Premier Securities Ltd., the 2nd respondent herein. The major portion of the shares held by the 2nd respondent company have been acquired by M/s. Integrated Finance Company Ltd.

12. Sec.8F(3)((i) and ii) of the Act reads as follows:-
"8F(1) ...
(2) ...
(3)(i) The Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may, at anytime or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal."

sub-clause (vi) of Sec.8F(3) of the Act reads as follows:-

"(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer on the date of the notice, or to the extent of the employer' s liability for any sum due under this Act whichever is less."

Sub-clause (x) of Sec.8F(3)of the Act reads as follows:-

"(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorised, he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 8B to 8E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 8B."

13. A close reading of these provisions will make it clear that the Provident Fund Commissioner or any other authorised officer may by notice in writing require any person from whom the money is due and when a person to whom the notice is sent objects to it by a statement on oath that the sum demanded is not due to the employer, then nothing contained in this sub-section shall require such a person to pay such sum, but if it is

discovered that such statement is false, such person is personally liable to the Commissioner and the person to whom the notice is sent fails to make the payment, he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings may be taken against him as if it were an arrear due from him.

14. The impugned proceedings have been issued following the provisions contained in Sec.8F of the Act. But the learned Senior Counsel appearing for the petitioner submitted that as per the rules, byelaws and regulations framed by the petitioner stock exchange, the amount received as security deposit from the 2nd respondent shall vest with the defaulter's committee, who is entitled to take such other acts as contemplated under the bye-laws. In the case of the petitioner that so far 11 arbitration awards have been passed against the 2nd respondent and the total amount of award comes to Rs.25,15,552.33 and the defaulting committee is liable to fulfil the obligations of the 2 nd respondent from the security deposit available with the petitioner who has got exclusive lien and charge over the same. Therefore, it cannot be attached under Sec.8F of the Act.

15. But the learned counsel for the 1st respondent submitted that under Sec.11(2) of the Act, the amount due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts and therefore the impugned proceedings have been validly passed as per Sec.11(2) of the Act, which is as under:-

"11(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer, (whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

16. In AIR 1966 S.C. 1370 (supra), the Hon'ble Supreme Court has held in para 32 as under:-

"(32) To summarize: A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in praesenti or in futuro: debitum in prasenti, solvendum in futuro. But a sum payable upon a contingency does not become a debt until the said contingency has happened. A liability to pay income-tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable. If the Finance Act is passed, it is the rate fixed by that Act; if the Finance Act has not yet been passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more favourable to the assessee. All the ingredients of a "debt" are present. It is a present liability of an ascertainable amount".

17. In AIR 1981 S.C. 1585 (supra), the Hon'ble Supreme Court while interpreting Sec.226 of the Income Tax Act, has held in para 3 as follows:-

"3(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of assessee's liability for any sum due under this Act, whichever is less."

18. In (2001)3 SCC 559 (supra), the Hon'ble Supreme Court has held in para 9 as under:-

"9. The Stock Exchange Rules, Bye-laws and Regulations have been approved by the Government of India under the Securities Contracts (Regulation) Act, 1956. There is no challenge to these Rules. The question whether right of membership confers upon the member any right of property is, therefore, to be examined within the framework of the Rules, Bye-laws and Regulations of the Exchange. On a plain and combined reading of the Rules, it is clear that right of membership is merely a personal privilege granted to a member, it is nontransferable and incapable of alienation by the member or his legal representatives and heirs except to the limited extent as provided in the Rules on fulfilment of conditions provided therein. The nomination wherever provided for is also not automatic. It is hedged by Rules. On right of nomination vesting in the Stock Exchange under the Rules, that right belongs to the Stock Exchange absolutely. The consideration received by the Stock Exchange on exercise of the right of nomination vesting in it, is to be applied in the manner provided in Rule 16."

19. In (2004)1 SCC 160 (supra), the Hon'ble Supreme Court has held in para 61 as under:-

"61. The learned Single Judge noted the admission made by the Exchange to the effect that the Defaulters' Committee called in and realised the security and margin money and securities deposited by the defaulter member and recovered monies, securities and other assets due, payable or deliverable to the defaulter member. It noticed that a sum of Rs.50 lakhs which the Defaulters' Committee would distribute rateably on pro rata basis amongst the creditor constituents of the defaulter member. It also noted that till 12.1.1995, the Exchange had received around 100 claims from the creditor constituents of the defaulter member aggregating to Rs.24 lakhs and in that view of the matter the Exchange agreed to make part-payment of Rs.2,96,000 to the respondent. The learned Single Judge while rejecting the contention of the Exchange that the assets belonging to the defaulter member cannot be attached in garnishee proceedings since it is not a debt due by the Exchange to the defaulter member, held:

" .. The submission is devoid of any merit. Despite admission of the Exchange as contained in the said affidavit dated 12.1.1995 that the Defaulters' Committee did realise the amount lying with it from the assets of the defaulter member, part of which has been utilised in defraying to the full extent the liability of the defaulter member to the Exchange, it is amusing that it is now contended that the amounts so realised belong to the Exchange and not to the defaulter member. No doubt the Defaulters' Committee of the Exchange is having custody or possession of such amount on behalf of the defaulter member but not the ownership thereof. It is not the property either of the Exchange or of the Defaulters' Committee. The surplus amount lying with the Defaulters' Committee is, in the wider sense, a debt due by the Exchange to the defaulter member and has been justifiably attached to the extent of the decretal amount payable by the defaulter member to the claimant by serving the garnishee notice upon the Exchange."

20. In (2000)5 SCC 694 (supra), the Hon'ble Supreme Court held in para 8 as follows:

"8.The principle of priority of government debts is founded on the rule of necessity and of public policy. The basic justification for the claim for priority of State debts rests on the well-recognised principle that the State is entitled to raise money by taxation because unless adequate revenue is received by the State, it would not be able to function as a sovereign Government at all. It is essential that as a sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds and this consideration emphasises the necessity and the wisdom of conceding to the State, the right to claim priority in respect of its tax dues (see Builders Supply Corn. AIR 1965 SC 1061 : (1965)56 ITR 91). In the same case the Constitution Bench has noticed a consensus of judicial opinion that the arrears of tax due to the State can claim priority over private debts and that this rule of common law amounts to law in force in the territory of British India at the relevant time within the meaning of Article 372(1) of the Constitution of India and therefore continues to be in force thereafter. On the very principle on which the rule is founded, the priority would be available only to such debts as are incurred by the subjects of the Crown by reference to the State's sovereign power of compulsory exaction and would not extend to charges for commercial services or obligation incurred by the subjects to the State pursuant to commercial transactions. Having reviewed the available judicial pronouncements their Lordships have summed up the law as under:
1.There is a consensus of judicial opinion that the arrears of tax due to the State can claim priority over private debts.
2.The common law doctrine about priority of Crown debts which was recognised by Indian High Courts prior to 1950 constituents "law in force" within the meaning of Article 372(1) and continues to be in force.
3.The basic justification for the claim for priority of State debts is the rule of necessity and the wisdom of conceding to the State the right to claim priority in respect of its tax dues.
4.The doctrine may not apply in respect of debts due to the State if they are contracted by citizens in relation to commercial activities which may be

undertaken by the State for achieving socio-economic good. In other words, where the welfare State enters into commercial fields which cannot be regarded as an essential and integral part of the basic government functions of the State and seeks to recover debts from its debtors arising out of such commercial activities the applicability of the doctrine of priority shall be open for consideration."

21. In (2001) 3 SCC 482 (supra) the Hon'ble Supreme Court has held in para 49 as follows:-

"49. Lastly, on behalf of the trading members of the National Stock Exchange it is contended that they are not the members of the said stock exchange so as to bring them within the ambit of the levy. This argument is based on the premise that it is only a full-fledged member of a stock exchange who can be called upon to be registered under Section 12(2) of the Act and not any other member of the stock exchange. They contend that the National Stock Exchange has only institutional members who are treated as full-fledged members and all others are only trading members who do not have any rights and obligations expected of a member of the stock exchange. It is also contended that under the Rules and Regulations, a stockbroker, to be registered as such under the Act, has to be a regular member of the stock exchange and since the said Rules and Regulations of the Board do not recognise a trading member as a member of the stock exchange, they cannot be brought within the net of the levy. They rely on the definition of " stock exchange" under Rule 2(d) of the Rules which states that " stock exchange" means a stock exchange which is for the time being recognised by the Central Government under Section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and a stock broker is defined as a member of a stock exchange. Since the stockbrokers of NSE being a company of which under Section 2(e) of the Act and NSE being a company of which shareholders are only institutions and trading members not being shareholders, they do not fall within the definition of a member of a stock exchange. It is difficult to accept this argument. Section 3(2)(c) of the SCR Act requires a stock exchange which applies for recognition to specify various classes of members who will be admitted as members of the stock exchange. This does not make any distinction between a full-fledged member and a trading member of the NSE. Further, clause 9 of Part II of annexure to Form 'A' requires a stock exchange, inter alia, to state the different classes of members, if any, and such number of members thereof, and the privileges enjoined (sic enjoyed) by such class of persons. Definition of a trading member under the NSE bye-laws itself shows that (sic) a trading member to be a stockbroker and a member of NSE registered in accordance with Chapter V of its bye-laws. Article l(m) of the Articles of NSE defines a "trading member" to mean a member of the stock exchange. Explanation to it further clarifies that there may be more than one class of trading members of the exchange as may be determined by its Board from time to time. A trading member of NSE need not necessarily be a member of the company that is NSE. Therefore, it is clear from the Articles of NSE that the said exchange itself recognises a trading member to be a member of the stock exchange, though with limited rights. Therefore, it is clear that there can be more than one class of members who can be admitted as members of the stock exchange and any of those members belonging to any of those classes so long as they are registered as such by a stock exchange, will fall within

the definition of "member" as defined in Section 2(c) of the SCR Act and Rule 2(e) of the SEBI Rules. It is also undisputed that the trading members of the NSE are carrying on the business of stockbrokering, hence, keeping in mind the objects of the Act, it would be futile to contend that the trading members of NSE cannot be considered to be the stockbrokers for the limited purpose of the liability to pay the impugned fee under the Act, Rules and Regulations. Therefore, this contention also should fail."

22. In AIR 1989 S.C. 2517, the Hon'ble Supreme Court has held in para 10 as follows:-

"10. The order of priority laid down by the aforesaid Rule 16 ensures that dues to the Ex-change or to the Clearing House have first to be met before the balance amount can be utilised for payment of debts, liabilities, obligations etc. arising out of any contract made by the former member. If the amount available is insufficient to pay all such debts, liabilities etc. then the payment is to be made pro rata. If, however, any surplus still remains the same is to be disposed of or applied in such manner as the Exchange in general meeting may decide.
The High Court, in our opinion, was, therefore, right in coming to the conclusion that on a default being committed the share broker ceases to become a member of the Exchange and all his rights, privileges etc. as a member come to an end. If he does not clear the dues within six months the Governing Body then has a right of nomination in respect of such membership. It will be incorrect to state that on the stock broker ceasing to be a member, he still retains any right or interest in the permission which has been granted to him by the Exchange to carry on business as a member. The membership card of a share broker is not his personal property which, on default being committed by him and his ceasing to be a member, can be sold and the proceeds distributed amongst his creditors. Rule 53 and 54 leave no manner of doubt that the member's right of membership vests in the Exchange after he is declared defaulter. This view, namely, that the defaulting member can claim no interest in the membership card and can pass none is in consonance with the decision of the Privy Council in Official Assignee of Bombay v. K.R.P.Shroff, AIR 1932 PC 186. In that case a member of the Bombay Stock Exchange had lost his membership for being a defaulter. The main question which arose for determination there was whether a card or right of membership of a share broker or the proceeds of sale thereof, when sold, would pass to the assignee in insolvency of the share broker's estate after he had lost his membership for being a defaulter. After referring to the Rules of the Stock Exchange in this connection it was observed at page 190 as follows:
"But although the rules are badly drawn and not in uniform phraseology their result in the case of a member who has lost his membership for being a defaulter clearly enough is that he loses all interest both in the property of the Association and in his card. In such a case no interest is reserved in the defaulter's card except to members of the Association who have suffered by his lapse in the rules sometimes called his creditors. - or to the Association itself. This seems to their Lordships to be the result of Rr.18,56,57 and 62. The defaulting member himself has no interest in the result of the sale provided for under these rules nor can he require a sale to be made. The rules are there for the benefit of his "exchange creditors" and

are doubtless enforceable at their instance."
In that case also a contention was sought to be raised that if the proceeds of the sale of the insolvent's card are not given to the official assignee the same would be regarded as being contrary to the law of insolvency. It was rightly observed that when the defaulting members is expelled from the Exchange no interest in his membership card remains in himself and none can pass to his assignee. Once the membership card ceases to be an asset of the share broker the question of Rule 16 being contrary to the insolvency law does not arise."

23. All the above judgments were delivered in the context of interpreting the provisions contained in the Acts which were under the scrutiny of the Hon'ble Supreme Court without reference to the clauses contained in the E.P.F. Act 1952.

24. In (1993)3 SCC 217 (supra), the Hon'ble Supreme Court has held in para 13 as follows:-

"13. That depends, obviously, on the scheme of the Act, the liability it fastens on the Director of the Company and applicability of the penal provisions to the statutory violation or breach of the Scheme framed under it. But before doing so it may not be out of place to mention that the Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments. The entire Act is directed towards achieving this objective by enacting provisions requiring the employer to contribute towards Provident Fund, Family Pension and Insurance and keep the Commissioner informed of it by filing regular returns and submitting details in forms prescribed for that purpose. Paragraph 36-A of the Provident Funds Scheme framed by Central Government under Section 5 of the Act requires the employer in relation to a factory or other establishment to furnish Form 5-A mentioning details of its branches and departments, owners, occupiers, Directors, partners, Managers or any other person or persons who have ultimate control over the affairs of the factory or establishment. The purpose of giving details of the owners, occupiers and Directors etc. is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is necessary as well as in absence of such responsibility the entire benevolent scheme may stand frustrated. The anxiety of the legislature to ensure that the employees are not put to any hardship in respect of Provident Fund is manifest from Sections 10 and 11 of the Act. The former grants immunity to provident fund from being attached for any debt outstanding against the employee. And the latter provides for priority of provident fund contribution over other debts if the employer is adjudged insolvent or the Company is winded up. Such being the nature of provident fund any violation or breach in this regard has to be construed strictly and against the employer."

This judgment clearly points out the importance of the provisions of the E.P.F. Act 1952 and it underlines the importance of Sections 1 0 and 11 of the Act.

25. In 2003-II-LLJ 657 (supra), this court held that when the parties raised a dispute regarding the payment of amount, the respondents cannot insist the petitioner to pay the amount irrespective of the dispute regarding the claim between the petitioner and others. In this case, this court has not gone into the priority of payment of contributions over other debts as per Sec.11 of the Act 1952.

26. In 2003-III-LLJ 419 (supra), the Division Bench of karnataka High Court has held in para 12 as under:-

"12. Perhaps, realising the difficulty to sustain the contention that the interest and costs could not form part of the hypothecated property, the learned counsel drew our attention to the provisions of sub-section (2) of Section 11 of the Act and would maintain that in the light of the provisions of sub-section (2), the claim of the first respondent-Department has priority over any claim of the AppellateBank. This submission is not acceptable to us. The provisions of subsection (3)(i) of Section 8-F and provisions of sub-section (2) of Section 11 should be read harmoniously and reasonably. The contribution which the employer is obligated to make under the provisions of the Act could not be fastened on anyone else except as directed by the Act itself. In other words, in enforcing the liability of the employer to pay provident fund contributions, against third parties, it becomes imperative for the Court to interpret the statute strictly, if it is so interpreted, it will not leave any doubt in anybody's mind that the Commissioner could raise the demand under sub-sections (3)(i) against a third party only when he finds the money of the employer in the hands of such third party to whom the notice is sent or in course of time, required money will become due to the employer. It is an established fact that on the date the Appellant Bank received the money from the Insurance Company or the date on which it received the notice issued by the Commissioner under Section 8-F(3)(i) of the Act, there was no money in the hands of the Bank which was due to employer. Therefore, in issuing the impugned notice dated March 2, 1995, the Commissioner acted ultra vires of the Act."

27. In the above case, the Division Bench of the Karnataka High Court has held that in enforcing the liability of the employer to pay provident fund contributions against third parties, it becomes imperative that the Commissioner could raise the demand under subsection 3(i) of Sec.8F of the Act 1952 against the third parties only when he finds the money of the employer in the hands of such third parties to whom the notice sent or in the course of time, required money will become due to the employer.

28. In 2002-I-LLJ 986, (supra) the Madhya Pradesh High Court has held that it was mandatory on the part of the Recovery Officer before passing the final orders, to hold an enquiry and give due opportunity to the person concerned.

29. By order dated 5.1.2001, the 1st respondent passed orders attaching the deposit money of the 2nd respondent lying in the hands of the petitioner. After giving an opportunity to the petitioner to file a statement on oath and only after going through the statement, passed the impugned

proceedings holding that the bye-laws, rules and regulations of the petitioner exchange will have to give way to Sec.8 F and 11 of the Act.

30. Under Sec.8F of the Act, the 1st respondent is empowered to recover the arrears of contribution payable by the employer from any person other than the defaulter. In other words, if the authorities come to know that if some person is holding the money of the defaulter, the authorities, after following the procedure so prescribed in the Section, directly recover the said money from the concerned person and may equally restrain him from paying the said money to the defaulter.

31. In this case, admittedly, the amount lying in the hands of the petitioner is the amount deposited by the 2nd respondent who is a defaulter in payment of P.F. contributions. It is the case of the petitioner that as per their bye-laws, this amount has to be paid as per their priorities and only when a balance is left, after meeting those priority payments that can be attached under Sec.8F of the Act.

32. But, as per Sec.11(2) of the Act 1952, if any amount is due from an employer, the amount so due shall be deemed to be the first charge and shall be paid in priority to all other debts. Sec.11(2) of the Act thus gives overriding effect of priority notwithstanding anything contained in any other law which is in force. By a close reading of Section 8F(3) and Section 11(2) of the Act, I am of the opinion that the bye-laws of the petitioner-exchange will have to give way for the 1st respondent for enforcing their statutory rights. Therefore, I uphold the impugned proceedings wherein it is clearly stated that the provisions of the E.P.F. Act 1952 will supercede any bye-laws, rules and regulations of any establishment. Moreover, E.P.F. Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments. The anxiety of the legislature to ensure that the employees are not put to any hardship in respect of any P.F.contribution is manifest from Sections 10 and 11 of the Act. Sec.11 of the Act provides for priority of P.F. contributions over other debts and such being the nature of Provident Fund, any violation or breach in this regard, has to be strictly construed.

33. In the light of the above discussions, I am unable to oust the case of the petitioner. Consequently, W.P.No.24857/2001 is dismissed. No costs. The other connected W.P.M.Ps. are also dismissed.

34. (II) Writ Petition No.25609/2001 has been filed for issue of a writ of certiorari to call for the records relating to the impugned attachment order No.E1/TN/36764/Enf/Rc.j1/2001 dated 5.1.2001 issued by the 1st respondent and quash the same insofar as it attaches the NSC deposit money lying with the 2nd respondent to the credit of the 3 rd respondent towards the arrears payable by M/s.Premier Housing & Industrial Enterprises Ltd.

35. The petitioners herein initiated arbitration proceedings against the 3rd respondent, M/s.Premier Securities Ltd., before the 2 nd

respondent-National Stock Exchange of India Ltd. The 2nd respondent passed an award directing the 3rd respondent to pay a sum of Rs.9,11,740.70 and Rs.4,99,778.81 with interest. Thereafter, the writ petitioners filed E.P.Nos.759 and 761 of 2001. They also took up garnishee proceedings against the 2nd respondent, as a sum of Rs.27,89,611.89 belonging to the 3rd respondent was lying with the 2nd respondentgarnishee. In that garnishee proceedings, the 2nd respondent filed a memo stating that the amount was already attached by the 1st respondent by an order dated 5.1.2001. Challenging the order of the 1st respondent dated 5.1.2001, the above writ petition has been filed for the aforesaid relief.

36. Heard the learned counsel for the petitioners and the learned Senior Counsel appearing for the 2nd respondent. I have also perused the records filed in this W.P.No.25609/2001.

37. This Writ Petition No.25609/2001 has to be dismissed on the ground that in the Writ Petition No.24857/2001 filed by the 2nd respondent herein challenging the very same impugned order dated 5.1.2001, I have taken the decision that there is no infirmity nor illegality in the said impugned order and consequently dismissed the same.

38. In view of the above fact, Writ Petition No.25609/2001 is also dismissed.

39. In the result, both W.P.Nos.24857 and 25609 of 2001 are dismissed. No costs. Connected W.P.M.Ps. are also dismissed.

sks

To
1.Employees' Provident Organisation
rep. by Asst.PF Commissioner
20, Royapettah High Road
Chennai.14

2.National Stock Exchange of India Ltd.
Rep. by its Director
No.9 Bazullah Road
T.Nagar, Chennai 17

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